

REMARKS

Reconsideration of this application and the rejection of the claims is respectfully requested. Applicants have attempted to address every objection and ground for rejection in the Office Action dated March 17, 2009 (Paper No. 20090313) and believe the application is now in condition for allowance. The claims have been amended to more clearly describe the present invention.

Applicants acknowledge with thanks withdrawal of rejections of record in the Office Action mailed August 27, 2008. Claims 41-57, 62 and 64 are pending in this application.

New dependent claim 65 has been added to the application. This claim features a filler that initially flows freely within the cavity and is compressed between the upper and lower members for distribution throughout the cavity. After distribution, the filler is cured *in situ*, hardening to provide support to the shower tray. Support for this claim is found on page 6, lines 7-9 and 20-24 and page 11, line 27 through page 12, line 1. No new matter is believed to be included by the introduction of this claim.

Claims 41, 48, 50-51, 55, 62 and 64 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over DE 107 46 944 A1 to Huber. Applicants suggest that Huber fails to disclose several features of the claims. At least three claim elements are absent from Huber. Since all claim features have not been revealed by the cited prior art, there can be no anticipation of the claims.

Applicants' claims feature an inner core of a filler that extends throughout the cavity. This feature is not taught or suggested by Huber. The reference suggests only use of a reinforcing element 7 with truncated pyramid structures 9 and arch-like members 11 that connect the pyramids. (Huber translation, page 2, lines 1-7) There is no teaching as to the frequency or spacing of the pyramid structures. Fig 2 shows regular pyramids along the cutaway edge, but suggests nothing as to the number or regularity of pyramids elsewhere. Huber further teaches in lines 8-10 the possibility of "disposing a hollow space in the surrounding border of the frame 13 in order to reduce weight." The extent of the hollow space is not specified. Thus, it is suggested that there is no teaching in Huber that the filler extends throughout the cavity since there is a hollow space present and the number or density of pyramids is not taught.

Per the teachings above and as shown in Fig. 2, the reinforcing of Huber ends before reaching the ledge or sidewall. One stepping into the shower, for example, could impart lateral forces on the shower tray that would be absorbed by the sidewalls. The reinforcing of Huber would not support lateral forces and could easily allow the floor of the shower tray to shift laterally in such cases. The Huber floor tray would not prevent flexing of the upper surface when stood on as featured in Applicants' claims.

The claimed shower tray also features a means for releasing air when the filler composition is compressed into all regions of the cavity. Huber does not remove the air from the cavity and does not have any holes or other means to vent the air. The Examiner points to

recesses 17 as providing a means for releasing air. However, the reference fails to discuss air release from the tray. The Examiner may cite to a feature if it is capable of use in the manner suggested, however that is not the case here. Recesses 17 are on the bottom of the tray. When the core material is flowing through the cavity to fill all of its parts, the air collects at the top of the cavity. The air would be unable to flow through the recess 17 since it would be filled with the core material. Since the recesses are incapable of releasing air at the critical time while the core material is flowable, they are not equivalent to the claimed air vents.

All three of the features discussed above are absent from claim 41 and the claims dependent thereon. As to claim 62, no means for releasing air is taught by Huber. Extension of the core throughout the cavity is not taught by Huber, nor is the means of releasing air as in claim 64. For at least these reasons, Huber fails to anticipate Applicants' claims and Applicants respectfully request that the rejection be withdrawn and the subject claims be allowed.

Claim 54 stand rejected under 35 U.S.C. § 103(a) as being obvious over Huber. The Examiner contends that the presence of a waste hole would be inherent in view of the teaching that the legs allow for pipes to run below the shower tray. Even if the waste hole were inherent, claim 54 should be allowable at least because the independent claim from which it depends is allowable.

Claims 42 and 43 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Huber in view of Thiele. These independent claims are patentable at least because the independent claim from which they depend is patentable.

Claims 44-47 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Huber in view of Klepsch. These independent claims are patentable at least because the independent claim from which they depend is patentable.

Claims 49, 52-53 and 56-57 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Huber. These independent claims are patentable at least because claim 41 from which they depend is patentable.

Applicants respectfully suggest that in the outstanding Action, the rejections evidence “picking and choosing” features of various references and combining them when there is no suggestion in those references to do so. This is evidenced, for example, by the contention that the recesses of Huber are suitable as a means for releasing air merely because they are openings. When the entire document is considered, it becomes obvious that the openings are in the wrong position to function as the claimed means. It is impermissible within the framework of a 35 U.S.C. § 103 rejection to pick and choose from any one reference only so much of it as will support a given position to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one skilled in the art. None of these references, whether cited or of record, taken either alone or in combination, disclose or suggest the invention as claimed.

Appl. No. 10/565,892
Amdt. Dated July 16, 2009
Reply to Office Action of March 17, 2009

It is submitted the amended claims are novel and inventive over Huber. Applicants submit that in view of the above-identified amendments and remarks, the claims in their present form are patentably distinct over the art of record. Allowance of the rejected claims is respectfully requested. Should the Examiner discover there are remaining issues which may be resolved by a telephone interview, he is invited to contact Applicants' undersigned attorney at the telephone number listed below.

Respectfully submitted,

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July 16, 2009
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